

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

LEE XU and STEPHEN M. SZYMANSKI,

Plaintiffs,

-against-

DIREXION SHARES ETF TRUST, RAFFERTY  
ASSET MANAGEMENT, LLC, DIREXION  
FAMILY OF INVESTMENT COMPANIES,  
DANIEL O'NEILL, DANIEL J. BYRNE,  
GERALD E. SHANLEY III, JACOB C.  
GAFFEY, PATRICK J. RUDNICK, ANGELA  
BRICKL, TODD KELLERMAN, PAUL  
BRIGANDI, TONY NG, MICHAEL  
RAFFERTY, KATHLEEN RAFFERTY HAY,  
U.S. BANCORP FUND SERVICES, LLC,  
FORESIDE FUND SERVICES, LLC,  
DIREXION ADVISORS, LLC,

Defendants.

Case No. 1:22-cv-5090 (VEC) (RWL)

**NOTICE OF MOTION**

**Oral Argument Requested**

PLEASE TAKE NOTICE that upon (i) the accompanying Memorandum of Law in Support of Defendants' Motion to Dismiss the Third Amended Complaint dated January 20, 2023, (ii) the annexed Declaration of Amy D. Roy, Esq. dated January 20, 2023, and the exhibits thereto, and (iii) all prior proceedings in this matter, Defendants Direxion Shares ETF Trust, Rafferty Asset Management, LLC, Direxion Family of Investment Companies, Daniel O'Neill, Daniel J. Byrne, Gerald E. Shanley III, Jacob C. Gaffey, Patrick J. Rudnick, Angela Brickl, Todd Kellerman, Paul Brigandi, Tony Ng, Michael Rafferty, Kathleen Rafferty Hay, U.S. Bancorp Fund Services, LLC, Direxion Advisors, LLC, and Foreside Fund Services, LLC will respectfully move this Court, at the United States District Court, Southern District of New York, 40 Foley Square, Room 443, New York, New York 10007, on such date and time as the Court determines, for an order pursuant to

Federal Rules of Civil Procedure 8, 9(b), and 12(b)(6) and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, dismissing the Third Amended Complaint, ECF No. 110, with prejudice, and granting such other and further relief as the Court deems just and proper.

Dated: January 20, 2023

DAVIS WRIGHT TREMAINE LLP

/s/ James K. Goldfarb (on consent)

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